



**U.S. Department of Justice**

*United States Attorney  
District of New Jersey*

970 Broad Street, Suite 700  
Newark, NJ 07102

(973) 645-2700

August 1, 2017

VIA ECF  
Honorable Susan D. Wigenton  
United States District Judge  
Martin Luther King, Jr. Federal Building  
& U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

Re: United States v. Mark Andreotti  
Criminal No. 15-569 (SDW)

Dear Judge Wigenton:

As the Court is aware, trial in the above-captioned matter is scheduled to commence on September 11, 2017.

Out of an abundance of caution in light of defendant Mark Andreotti's statements in Court on July 24, 2017, the United States re-extended the plea offer that was made to Defendant through prior counsel for the defendant by letter dated October 27, 2016.<sup>1</sup> This plea offer, dated July 25, 2017, was transmitted to defense counsel, John P. McGovern, Esq. by electronic mail with the deadline of July 31, 2017 of 5:00 p.m. Attached hereto as Exhibit A are copies of the correspondence transmitting the plea offer. To date, the Government has not received any communication from Mr. McGovern regarding the plea offer. Accordingly, the United States respectfully submits this letter to request that on August 8, 2017, at 11:00 a.m., the Court conduct an inquiry pursuant to Missouri v. Frye, 132 S. Ct. 1399 (2012), designed to prevent the defendant from claiming that counsel failed to convey and advise him about the most recent formal plea offer made by the Government, and to make a sufficient record that counsel fulfilled those obligations. Specifically, the Government suggests that, after the Government sets forth on the record that a formal plea offer was sent to defense counsel by letter dated July 25, 2017, the Court ask defense counsel the following questions:

1. Did you receive a proposed plea agreement dated July 25, 2017?
2. Did you provide a copy of that proposed plea agreement to your client?
3. Did you review the proposed plea agreement with your client prior to the expiration date of the plea offer?

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<sup>1</sup> To ensure compliance with the prohibition against judicial involvement in plea negotiations, Fed. R. Crim. P. 11(c), the Government will not describe the terms of any plea offers.

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4. Did you have a sufficient opportunity to discuss the proposed plea agreement with your client?
5. Did your client reject the proposed plea agreement?

If defense counsel answers “yes” to all of those questions, the Government suggests that the Court address the defendant as follows: I am going to ask you some questions. Do not disclose any communications with your attorney. Do not tell me the terms of any plea offer made by the Government. The Court is not involved in any plea negotiations, and it has no opinion regarding your decision whether to plead guilty or proceed to trial. When I ask you these questions, please give me a yes or no answer to each question – nothing more.

1. Did you receive the proposed plea agreement dated July 25, 2017?
2. Did you have a sufficient opportunity to consult with your attorney about that proposed plea agreement?
3. Do you understand that it is exclusively your decision whether to accept or reject the proposed plea agreement, but that you should make that decision in consultation with your attorney?
4. Did you, in fact, reject the proposed plea agreement?

The Government believes that this proposed procedure will effectively ferret out and ameliorate any Frye problems without compromising or intruding upon the attorney-client relationship.

Respectfully submitted,

WILLIAM E. FITZPATRICK  
Acting United States Attorney

/s/ Shana W. Chen

By: Shana W. Chen  
Assistant U.S. Attorney

/s/ Charlie L. Divine

By: Charlie L. Divine  
Special Assistant U.S. Attorney

cc: John P. McGovern, Esq. (via email, sean@mcgovernlaw.com)

## **EXHIBIT A**

**Chen, Shana (USANJ) 1**

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**From:** Chen, Shana (USANJ) 1  
**Sent:** Tuesday, July 25, 2017 10:33 AM  
**To:** jpmsean@aol.com; 'Sean McGovern'  
**Cc:** charlie.divine@fhfaoig.gov  
**Subject:** US v. Mark Andreotti, Crim. No. 15-569 (SDW)  
**Attachments:** Plea3 Cvr Ltr.pdf; PleaAgmt\_3.pdf

As discussed yesterday in court, please see the attached plea offer. It is open until next Monday.  
Shana and Charlie

Shana W. Chen  
Assistant U.S. Attorney  
District of New Jersey  
w-973.353.6095  
shana.chen@usdoj.gov



## U.S. Department of Justice

*United States Attorney  
District of New Jersey*

*Shana W. Chen  
Assistant United States Attorney*

*970 Broad Street, Suite 700  
Newark, NJ 07102*

*(973) 645-2700  
(973) 353-6095 Direct*

July 25, 2017

VIA EMAIL

John P. McGovern, Esq.  
Law Offices of John P. McGovern  
45 Bleeker Street  
Newark, NJ 07102

Re: Plea Agreement with Mark Andreotti

Dear Mr. McGovern:

Enclosed is a draft proposed plea agreement dated July 25, 2017, which contains the same terms as the prior plea agreement dated October 21, 2016. If your client wishes to accept this agreement, please have him sign the plea agreement, witness the signature, and return the original signed plea agreement to me. Please note that the plea agreement will expire if a signed copy is not received by **5:00pm on Monday, July 31, 2017**.

Please do not hesitate to call me at (973) 353-6095 if you have any questions or wish to discuss this matter further.

Respectfully,

WILLIAM E. FITZPATRICK  
Acting United States Attorney

/s/ Shana W. Chen

By: Shana W. Chen  
Assistant U.S. Attorney

/s/ Charlie L. Divine

By: Charlie L. Divine  
Special Assistant U.S. Attorney

Encl.

**Chen, Shana (USANJ) 1**

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**From:** Chen, Shana (USANJ) 1  
**Sent:** Monday, July 31, 2017 10:57 AM  
**To:** jpmsean@aol.com; 'Sean McGovern'  
**Cc:** charlie.divine@fhfaoig.gov  
**Subject:** RE: US v. Mark Andreotti, Crim. No. 15-569 (SDW)  
**Attachments:** PleaAgmt3\_signedzi.pdf

Dear Sean,

Attached is the plea agreement again with the signature page signed by my supervisor, Zach Intrater. Today is the deadline for Mark Andreotti to accept this offer, so please let us know by 5pm today if Mark Andreotti wishes to accept or decline this offer.

Thank you.

Shana and Charlie

Shana W. Chen  
Assistant U.S. Attorney  
District of New Jersey  
w-973.353.6095  
[shana.chen@usdoj.gov](mailto:shana.chen@usdoj.gov)

**From:** Chen, Shana (USANJ) 1  
**Sent:** Tuesday, July 25, 2017 10:33 AM  
**To:** jpmsean@aol.com; 'Sean McGovern' <[sean@mcgovernlawfirm.com](mailto:sean@mcgovernlawfirm.com)>  
**Cc:** charlie.divine@fhfaoig.gov  
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